



C.R.P. No.3328 of 2019 &
C.M.P. No.21606 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM: JUSTICE N.SESHASAYEE

C.R.P. No.3328 of 2019 and C.M.P. No.21606 of 2019

R.Kumarasamy

... Petitioner

Vs.

Anantharaj

... Respondent

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in I.A. No.901 of 2018 in O.S. No.809 of 2018 on the file of Principal Subordinate Court, Erode dated 01.03.2019.

For Petitioner : Mr.A.Sundaravadhanan

For Respondent : Mr.S.Kaithamalai Kumaran

ORDER

The defendant in O.S. No.809 of 2018 on the file of the Principal Subordinate Court, Erode, has preferred this revision against an order of interim attachment under Order XXXVIII Rule 5 CPC.



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2. The learned counsel for the revision petitioner herein/defendant submitted that he has filed a counter giving an undertaking that he is not intending to alienate the property. However, ignoring the same, the trial court has attached the property. He added that even as per the valuation given by the plaintiff, the property is worth about Rs.50.00 lakhs, but the suit claim is only Rs.6.12 Lakhs which is required to be payable along with interest @ 12% per annum. He added further that once the defendant has given an undertaking that he would not alienate the property, the trial court ought to have noted that it is a statement made to the effect that the property is not proposed to be alienated, which is a pre-requisite factor for invoking Order XXXVIII Rule 5 CPC.

3. This order is fundamentally bad in law, that as per Order XXXVIII Rules 5 and 6 of CPC, court can attach only so much of property as may be necessary to satisfy a decree that may be passed against the defendant and not more. Here, the value of the suit claim is around 1/8th of the value of the property stated. In view of the same, this court does not consider that the order of the trial court can stand the scrutiny of the procedural requirements of Order XXXVIII Rule 5 CPC.



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4. This court records the undertaking of the learned counsel for the revision petitioner/defendant that the defendant would not alienate the property. However, this court also gives an opportunity to the defendant to move the trial court (the suit is now stated to be pending in O.S. No.384 of 2019 on the file of Principal District Judge, Erode) for earmarking so much of property as may be necessary to satisfy the decree with clear boundaries, whereupon the court is required to limit the operation of attachment to the portion so offered, but only after satisfying itself of the requirements for attaching the property before judgment under Order XXXVIII Rule 5(1) of CPC.

5. With the above direction, the civil revision petition is disposed of. However, there is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

13.03.2023

Asr

To
The Principal District Judge, Erode



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N.SESHASAYEE, J.,

Asr

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